REGISTRATION OF TITLE TO REAL ESTATE.

THE subject of this article is the advisability of substituting for the registration of conveyances the system of registering title known as Torrens's, especially in the case of an old commercial and manufacturing country, where dealings with real estate are complicated and titles often defective. I have experienced great difficulty in compressing this subject within the limits of an article. If my object had been merely to restate the leading features of the Torrens system, I should have had no difficulty; but these are so fully stated in easily accessible works, that I think their restatement would be of no service.

The object of every system of conveyancing is to relieve those who acquire interests in real estate for value and in good faith from the risks attendant on defects in title.

Prior to the reign of Henry VIII. this object was effected by an elaborate system of rules of law; which, however, also rendered impracticable the complicated dealings which the exigencies of modern life demand. In that and the immediately subsequent reigns these rules were almost wholly abrogated by legislation, by the decisions of courts of equity, and by changes in the customs of conveyancers, and the need of some other protection became felt. In 1669 a committee of the House of Lords advised the adoption of a system of registration, but, as regards the greater part of England, nothing was done in this direction.

A system of conveyancing, however, sprang up, which has answered almost equally well. Deeds are framed in so elaborate and formal a manner that an unprofessional person cannot imitate or even understand them. The law forbids any one but lawyers and certificated conveyancers to prepare them for remuneration. Professional men are invariably employed on all transactions respecting real estate. A title deduced through a chain of formal conveyances is held free from all informal dealings except those of which the transferee, his advisers, or agents, have knowledge or (until a recent statute) grounds of suspicion. The result is that it is rarely possible for a purchaser to be deceived, unless one of the

attorneys is party to the fraud; and the penalty for such complicity, involving deprivation of the right to practise, is so severe that it is very rarely ventured on.

Nevertheless, in the reign of Anne, registries of conveyances were established for Ireland, and for two English counties, York and Middlesex,[1] and have since been established in most parts of the English-speaking world. The statutes establishing this system carry out its principle in various degrees; the remodelled Yorkshire Acts (47–8 Vict. c. 54, amended by 48–9 Vict. c. 26) and the Irish Act being, I believe, the most perfect. The system can be best understood by assuming it to be carried to its logical conclusion. As so perfected, a means is provided for the registration of every transaction by which any interest in real estate is created, or dealt with, or transmitted by operation of law. But registration, though it protects transmittees and gratuitous grantees against the risk of being deprived (by a subsequent registered conveyance from their transmittor or grantor to another person) of the estate to which they are entitled apart from registration, yet does not give them any larger estate or better title than they would have possessed if no registry Act had been in force,[2] or protect them against being displaced by any means by which they might have been displaced if no such Act had been in force. It is disponees for value only who acquire a better title by registration. They, if acting in good faith, acquire by registration the same title as if all unregistered transactions by which title is derived from or through the grantor of the earliest registered deed through which their title is traced had not taken place, and as if all registered transactions by which title is derived from or through him had taken place in the order of time in which they are registered.[3] Of course, titles which are not derived through the grantor of the first registered transaction cannot be affected by registration. A registry Act always leaves the party at liberty to refrain from registration if they please. If, when the Act is first passed, A, being owner of land, conveys it to B, who does not register, and afterward to C, who does not register; and C conveys to D, who registers, D only displaces any person to whom C may have conveyed before he conveyed to D. D does not, by his registration, improve C's title, or

[1] Irish Act, 6 Ann. c. 2, Ir.; Yorkshire Acts, 2 & 3 Ann. c. 4; 6 Ann. c. 20, c. 62; 8 Geo. II. c. 6.

[2] Remodelled Yorkshire Act, 47–8 Vict. c. 54, § 14.

[3] Ibid. §§ 14 and 16; 15.

therefore displace B's. He may do that by registering C's conveyance, at least if he registers it before he registers his own; but otherwise B remains owner, and those deriving under him to the end of time take precedence over D. This rule preserves ancient rents, rights of common, rights of way, and the like, without any necessity for express reservation. And it is also usual to allow to short unregistered occupation leases the same priority as if they had been registered.[1] Claims of which the registering grantee or his agent had knowledge are also exempted under *most* registry Acts, and when an Act provides for the registration of some transactions only, the others retain the same priority as if registered.

Alike under the system of registering conveyances and under that of non-registration it is necessary to investigate the title. The investigator is always informed of the conveyance to the intending grantor, and traces title from him backwards for a period fixed by custom or statute, — forty, fifty, or sixty years, — and for a longer period if the transactions within that period suggest grounds for suspicion of an earlier flaw; and forward to ascertain whether the grantor has since dealt with the estate. If there is no register, he must depend on the good faith of the intending grantor and his advisers, and on the consecutiveness of the deeds, for information as to the transactions to be examined. If there be a register, he ascertains from indexes of grantors and grantees in what conveyances the intending grantor was grantee; and, by examining them, ascertains which affects the title in question, and so backward for the prescribed period, and forward in like manner. In some offices this labor is lightened by separate indexes of localities.[2] In Ireland the searches are made by the officials, and certified by the registrar who is responsible for mistakes and omissions;[3] and these certificates are kept with the title deeds, and obviate the necessity of repeating the search over the same period. After the searches have been made, the legal advisers of the parties must estimate the legal effect of the transactions disclosed; and this process has to be repeated on every transaction, unless the grantee's attorney is already familiar with the earlier title.

It is to obviate the necessity of these searches, and of the subsequent examination of the legal effect of the transactions, that the

[1] Remodelled Yorkshire Act, 47–8 Vict. c. 54, § 28.

[2] Irish Act, 2 & 3 Wm. IV c, 87, § 17; 11 & 12 Vict. c. 120, § 7.

[3] 2 & 3 Wm. IV. c. 87, § 26; 11 & 12 Vict. c. 120, § 4.

Registration of Title is designed. The statutes establishing it provide also for the investigation of the title by public officials, and for the extinguishment of all claims not discovered by them; but this is not an essential feature in the system, nor is it incompatible with either of the other systems; and I think I can explain the system more clearly if I suppose that the title prior to the first registration under the new system is allowed to remain with all its imperfections, while, owing to the method of conveyancing thenceforward adopted, new imperfections would not be allowed to creep in. The result would be that after the lapse of sixty years (or whatever period might be customary in searching title) an investigation would not require to be carried back beyond the time when the title was brought under the new system, except sufficiently to ascertain that the party who brought it under that system, or one under whom he derives, had purchased for value, so as to afford a presumption that he then investigated the earlier title.

Now the system of registering title, like that of registering conveyancing, can be best understood by assuming it to be carried to its logical conclusion. It never has been so carried out. All existing statutes and bills carry it out imperfectly. But their provisions will be much more intelligible if we prepare for their examination by imagining an ideal in which its principles should be carried out fully.

In order to do so we must first suppose the passage of a comprehensive statute for shortening deeds. The length of deeds is partly due to the habit of paying by length. But it is also due to the fact that the rules of law have not been altered to keep pace with changes in our social condition. The legal rules regulating the rights of persons in their dealings with real estate originated centuries ago, and were adapted to the social conditions then existing. When these conditions changed, it became necessary for parties to make laws for themselves, by inserting in every contract, deed, and will, clauses by which their rights might be regulated in substitution for the rules provided by law. By degrees, conveyancing lawyers invented clauses for this purpose, and inserted in each deed such of them as were appropriate to the transaction. Voluminous books have been published containing "precedents," or models for each class of deed, etc., and inserting in each the clauses appropriate to it. When a deed, etc., of any given class is prepared, the clauses appropriate to it are copied in from the books of precedents; and the clauses themselves, being of general application, are known as

"common forms" of conveyancing. Conveyancing, in truth, is a vast system of legislation by private enterprise, and, until these "common forms" are metamorphosed into rules of law, deeds cannot be reduced to short dimensions. Something has been done in this way in England.[1] Some of the common forms are by statute implied, and need not be expressed. But the alteration has been partial and unsystematic. Supposing it were made complete, deeds, etc., would contain no more than the date, the description of the parties and of the property, and the statement of the interest which the disponee is intended to acquire, and of the "consideration" or price which he pays for it. Such deeds could be prepared by filling up short printed forms. Let us suppose this reform accomplished.

Next let us suppose it enacted that any person, claiming to be entitled in fee simple to an area of land, including everything under or on the surface, may fill up a printed form declaring his claim, and register it as a conveyance should be registered under the existing system; and that the subsequent registration (under that system) of any transaction affecting the premises comprised in the declaration should be void so far as regards title derived under the declarant, but should retain its validity so far as regards title not derived under him. The effect of such a declaration would be to close the old register so far as regards any estate in the premises possessed by the declarant, but without giving him any estate beyond that (if any) which he possessed before.

Next, suppose it enacted that the registrar shall open new books for the purpose of registering, under the new system, those titles respecting which declarations have been registered. A declaration having been registered in the old books, a copy of it would be registered in the new books; and a certificate, stating that the declarant claims to have been entitled to the land in fee simple on such a day (stating the date of registering the declaration) would be issued by the registrar to the declarant.

Now let us take the simplest case first, and suppose that no partial interests are created by the declarant or those deriving under him, but that the estate is dealt with by wholly transferring it from one to another by deed or will. When a transfer by deed is made, a short printed form is filled up, and signed and registered as a deed would be under the old system; but it may not be registered unless the certificate previously issued be delivered up to the regis-

[1] 44–5 Vict. c. 41; 38–9 Vict. c. 87, §§ 23, 24; so all the Registration of Title Acts.

trar to be cancelled.[1] He then issues to the transferee a new certificate, purporting that all such estate and title as was in the declarant when his declaration was registered is now in the transferee; and a clause in the statute gives effect to this by extinguishing all intermediate claims (if any), except such as the transferee may have agreed to be subject to,[2] and except such as may have arisen against him[3] (or if he pays no value) against his transferor by reason of his fraud or that of his transferor or a predecessor in title. But it does not appear that under the existing statutes, except the English Act of 1875,[4] he will be subject to claims arising from conduct which is not fraudulent, as when the obligation to confirm a will arises from accepting benefits under it; although on principle he ought to be subject to these also. A registered holder, subject to unregistered claims, can defeat them by making a registered transfer for value.[5] Until he has done so he is compellable to clothe them with the registered title, if they be registrable. The claims of persons in possession at the time of the first registration under the system are, by the statutes, preserved to them, so long as they continue in possession;[6] but this is not material under the suppositions we are making, that the declarant who first registers acquires no greater title than he had before.

As regards disposition by will and devolution on intestacy, the Acts differ. Under the English Act of 1875, the executor after probate, or the administrator, is to be registered as holder of leaseholds;[7] and a trustee, selected as the Act prescribes, is to be registered as holder of freeholds;[8] but either can transfer as complete a title as if he were owner,[9] and the parties beneficially interested can only protect themselves by caveats (described below). Under the New Zealand and Victoria Acts,[10] the same procedure is (substantially) followed as regards leaseholds; but, as regards free-

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[1] Illinois Act of 1895, statute book, p. 107, § 39; Victoria (Australia) remodelled Act of 1890, 54 Vict. No. 1149, § 93; New Zealand Act, 33-4 Vict. No. 51, § 50. The English Act of 1875, 38-9 Vict. c. 87, leaves this to be provided for by rules to be made.

[2] Eng. 1875, § 8; Victoria, §§ 50, 69; N. Zealand, § 39; Illinois, § 29.

[3] Eng. 1875, § 98; Victoria, § 205; N. Zealand, §§ 46, 129; Illinois, § 29.

[4] Eng. 1875, §§ 7, 8.

[5] Eng. Act of 1875, §§ 33, 38; other Act, sections referred to under note 2.

[6] Eng. Act of 1875, § 18; Victoria, § 74; N. Zealand, §§ 129, 139; Illinois, § 29.

[7] Eng. 1875, §§ 42, 46.

[8] Ibid. §§ 41, 46.

[9] Ibid. §§ 46, 83 (1).

[10] Victoria, § 138; N. Zealand, § 85.

holds,[1] the heir or devisee gives such proof as he may be able to adduce, and the registrar gives publicity to his claim, and, if no objection is made within six months, registers him as holder, and he remains subject to all claims to which the deceased was subject, but can defeat them by a registered transfer to another. Under the Illinois Act (the provisions of which are adopted in the bill now before the British Parliament), a memorandum of the probate or administration is registered,[2] and the executor or administrator may deal with the premises in course of administration, and convey them to the parties ultimately entitled; but, as regards freeholds, only after obtaining permission from a court of competent jurisdiction. If the premises are willed to the executor, either for his own use or in trust, he may be registered as holder,[3] and stands in the same position as any other holder; and, if a power to sell be expressly given him, he may have the purchaser so registered.[4]

When the registered holder becomes bankrupt,[5] or assigns for his creditors, the assignee is registered, and holds subject to such claims as the bankrupt or assignor was subject to, except, of course, such as are void against such assignees.[6] But he can defeat such claims by making a registered transfer for value. In Illinois, an order of the court seems necessary to the validity of such a transfer.[7]

So far all is simple. But next, suppose that the declarant, or some subsequent holder of the fee simple, creates partial interests. If the principle of the system is to be logically worked out, all these interests must be capable of registration. In order to put the reader in possession of the reason why the system is difficult to work in a populous commercial and manufacturing country, it is necessary to classify all the partial interests which can be created, and to put a complicated case as an example of how the system would work if they could all be registered.

A landowner may convey away part of the land itself, dividing it vertically or horizontally. He may part with a field, retaining the rest, or he may part with the minerals, retaining the surface, or *vice versa*.

A landowner may create a "profit in prender," — a right to take

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[1] Victoria, §§ 225–6; N. Zealand, § 86.
[2] Illinois, §§ 60, 61, 62. [3] Ibid. § 63. [4] Ibid. § 64.
[5] Eng. 1875, § 43; Victoria, § 236; N. Zealand, § 82; Illinois, §§ 69, 70.
[6] Eng. 1875, § 46; Victoria, § 236; N. Zealand, § 82.
[7] Illinois, § 70.

something from the land, as to take metals, coal, clay, gravel, trees, grass (or to put cattle in to graze), turf, fish (if the land be covered with water), etc.

A landowner may create an "easement," — a right to use his land in a specified manner, or to restrict his use of it, as, a right to walk or drive over it, to run a drain through it, to have the support of it for buildings on adjoining land, to have the light or the air which flows over it to adjoining land uninterrupted, to prevent the owner from opening a saloon on it; in fact, the restrictions which the owner may entitle another to impose on the use of the land are innumerable.

The owner of land, or of the surface or minerals, or of any profit or easement, may bind himself and all who may derive under him to pay a sum of money, or to allow it to be levied off the land; and this may be a lump sum, in which case the encumbrance is usually termed a mortgage, or a periodical sum, in which case it is a rent.

The owner of land, surface, minerals, profit, easement, or encumbrance, may transfer the ownership for a limited period, as for life, or for years; and that to begin either immediately, or at a future time, or on the happening of a contingency. Or he may grant a number of these partial interests, one to commence when another terminates. Or he may convey away the fee simple itself as from a future time, or as from the happening of a contingency, retaining it meanwhile.

And lastly, any estate or interest may be conveyed upon condition, so that if the condition be broken it reverts back to the transferor.

Now, when any partial interest is created, the deed by which it is created (or in case it be created by will a similar deed executed by the executor under the direction of the court after the executor's title has been registered) must (if the system is to be logically carried out) be entered in a separate registry book, as the starting point of a new title as distinct from that of the fee simple as that was from the title on the old register of conveyances. And if the holder of the fee simple in the land creates fifty subordinate interests, each one of them must, in like manner, form the starting point of a new title. But a memorandum of each must be noted on the register of the land, and also on the certificate of title to the land, in order that any subsequent purchaser of the land may know of it; and this memorandum must refer to the folio of the register on which a full statement of it may be found; and the certificate

must be brought in for this purpose before the grant of the partial interest can be registered. When this has been done, the registrar is to issue a certificate of title to the partial interest, just as he issued a certificate of title to the land; and subsequent dealings with the partial interest are to be conducted in the same manner, and with the same effect, as dealings with the land. And subsequent transferees of the land are to take subject to the partial interests noted on their transferor's certificate, and memoranda of the partial interests are to be copied on each successive registration of a transfer of the land, and on each successive certificate of title to the land; but, if the registrar should happen to omit any, the transferee of the land, though subject to it himself, because it was on his transferor's certificate, yet can, by making a transfer for value, extinguish it, unless, meanwhile, the mistake is discovered and rectified. The owner of a partial interest can extinguish it by registering a release of it; and in that case (as also if it was by the terms of the deed creating it to cease at a specified time, and if that time has expired), the memoranda of it are to be cancelled, and, on subsequent transfers of the land, are to be omitted.

If the owner of a partial interest creates a still lesser interest out of it, the same provisions apply *mutatis mutandis*, and so on *ad infinitum*.

Now, let us see how these rules would work out in case of such dealings with land as take place in real life.

Suppose A, being entitled to the land in fee simple, grants a perpetual right to take minerals to B, who leases it for twenty-one years to C, who mortgages his lease to D. Then, suppose A grants the land to E for life, and after his death to the heirs of F in fee, with proviso, that if F shall survive E, it shall pass, not to the heirs of F, but to the first son who may be born to G. The registration would stand thus: —

Book I. shows A entitled to the land in fee with memoranda of the following grants: —

1. Mining right to B.
2. Land to E for life.
3. Land to heirs of F in fee, commencing at E's death, and conditional on E surviving F.
4. Land to first son that may be born to G in fee, commencing at E's death, and conditional on F surviving E.

Book II. shows B entitled to take minerals in fee, with memorandum of lease to C.

Book III. shows C entitled to take minerals for twenty-one years, with memorandum of mortgage to D.

Book IV. shows D entitled to mortgage on lease of right to take minerals.

Book V. shows E entitled to land for life, with memorandum of mining right in B.

Book VI. shows F entitled to land in fee as from E's death, conditionally on E surviving F, with memorandum of mining right in B.

Book VII. shows G entitled to land in fee as from E's death, conditionally on F surviving E, with memorandum of mining right in B.

If, afterwards, F survives E, and E leaves no son, Books V., VI., and VII. must be closed; while if F survives E, and E leaves a son, or has had a son who leaves a representative, the same books must be closed, and A must convey to E's son, the conveyance being registered in Book I. But, in order that Books V., VI., and VII. may be closed, the above facts must be proved before and adjudicated on by some authority. Even the concurrence of all parties cannot obviate this, for the person claiming to be E's first son may not be really so. Either, therefore, the decision of a court of justice must be obtained, or the registrar or examiners must be intrusted with judicial powers.

But the above method of carrying out fully the principles of the system have been thought too complicated, and the statutes only carry them out partially. One method is adopted by the English Act of 1862 and the Ontario Act, another by the English Act of 1875 and the Australian Acts, and another by the Illinois Act. There is not space to explain all.

Leaving the Illinois Act for subsequent consideration, the Acts allow an estate in fee simple[1] in land (and some Acts also allow a rent-charge, a right of mining or way, or the like) to be brought under the Act. A leasehold may also be brought under it. After the fee or leasehold had been brought under the Act, a lease or mortgage may be noted on the register,[2] and may itself, with its subsequent title, be made the subject of a separate registration. But other partial interests are excluded from the register, and must still be dealt with under the old system. Yet there must be some

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[1] Eng. 1875, §§ 5, 82; Victoria, § 21; N. Zealand, § 21.

[2] Eng. 1875, Lease, §§ 11, 50, 51; Mortgage, § 22; Victoria, Lease, § 41.

means by which an intending transferee of a registered estate may be notified of these partial interests, and some way of preserving them from extinguishment by a registered transfer. These objects are effected by allowing any one who claims such a partial interest to lodge with the Registrar a "caveat,"[1] forbidding him to register a transfer without the caveator's consent, or until the lapse of a period after he has notified the caveator that a transfer has been delivered to him for registration. The caveator can get the period extended by showing sufficient grounds and giving security to indemnify any one who may be injured by the delay of the registration.[2] Meanwhile the caveator is expected, if he cannot arrange the matter with the transferee, to bring the question before a court of justice, and some of the Acts provide for having this done in a summary manner.[3] If, however, this is not done before the caveat lapses, the transfer may be registered; and its registration extinguishes the partial interest.

The objections to the caveat system are as follows: —

(1) If, when the land is transferred, it be determined to preserve the partial interest, the only way appears to be by a deed, or perhaps a written confirmation, from the transferee.

(2) If the transferee disputes the validity of the partial interest, the caveator must take the aggressive in bringing the matter before a court, though his object is merely defence. He cannot do this unless he is in a position to advance money; and if he is not prepared to act at once, he cannot have the time extended without giving security. If he is ill or abroad the evil is intensified. The notice may fail to reach him, and the negligence of a post-office clerk or the wreck of a mail steamer may cause the loss of a right which may be very valuable.[4]

(3) If the statute makes the caveator's consent necessary to the transfer, his absence, illness, or obstinacy may cause great loss to the transferee.

(4) If he holds in trust for persons unknown or unascertained, his negligence or misfortune may destroy their estate.

(5) The old register of conveyances must be preserved for dealings with these partial interests.

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[1] Eng. 1875, § 54; Victoria, §§ 144-9; N. Zealand, § 88.

[2] Eng. Act, 1875, § 55; Victoria, § 145 (fin.).

[3] Eng. 1875, § 57. Under the Victoria Act, § 145, and the N. Zealand Act, § 89, the party desiring to transfer may bring the question before the court summarily.

[4] See especially Eng. 1875, § 90.

(6) If the statute authorizes only those who *are*, and not all who *claim to be*, partially interested to lodge a caveat (as the English Act of 1875 does), difficulty may arise in satisfying the registrar on that point.

(7) If otherwise, vexatious caveats may be lodged.

(8) If the caveator disposes of his interest among many, the number of caveats may become aggressively great.

The Illinois Act adopts a different system. When the fee simple has been registered, it permits registration of *any* partial interest except trusts, conditions, and limitations;[1] and when those are contained in a deed, will, etc., the transfer is to be made to the party entitled subject thereto, describing him as subject to a trust, etc., but without stating what it is; and no further transfer is to be made unless two examiners of title certify that such transfer is accordant with such trust, etc., in which case the transfer when registered extinguishes the trust, condition, or limitation.[2] The objection to this is that it commits judicial powers to the examiners, and this is the great blot on the Illinois system, which is otherwise much superior to, as it is vastly simpler than, the others.

But, it may be asked, what is to prevent two or more persons, though not really interested in the land, from registering inconsistent declarations, each claiming to be owner? The foregoing provisions do *not* prevent this. They leave the purchaser under the necessity, as other systems of conveyancing do, of ascertaining that the parties in possession claim by a title consistent with that appearing on the register. Clauses, however, have been introduced into the Registry of Title Acts for obviating this necessity. The English Act of 1862 requires, as a condition of bringing land under the Act, proof that the applicant has been in possession as owner for ten years, production of the last deed or will in the title, and a declaration by himself or his attorney that he believes him to be entitled.[3] The English Act of 1875[4] authorizes rules to be made requiring notices and evidence. The Illinois and Australian Acts require investigation and proof of title.[5] But all these rules could be applied under the old system as well as the new.

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[1] Illinois, §§ 7, 48.
[2] Ibid. §§ 57, 58.
[3] Eng. 1862, § 25.
[4] Eng. 1873, §§ 4, 6, 111.
[5] Illinois, §§ 14, 15; Victoria, §§ 22, 23; N. Zealand, § 24, *sqq.*

The acquisition of a title by long possession seems inconsistent with any system of holding title by documentary evidence; but the necessity just referred to of ascertaining that the title is consistent with the possession shows that it cannot be dispensed with, except when some means for insuring that the registered title shall be consistent with the possession have been adopted, — as in the statutes just referred to. Such statutes, however, generally contain provisions for preventing the acquisition of title by possession.[1]

The necessity for protecting against forgery is not so great under the new system as under the old, because under the former the transferor's certificate of title must be produced when a transfer is registered. But, if the certificate be stolen, a forged transfer can be registered; and some better protection against forgery than that explained in 6 HARVARD LAW REVIEW, 303, as existing in Massachusetts, will be necessary.

The extinguishment of claims adverse to the registered title is always provided for by Registry of Title Acts,[2] but has also been provided for in England and Ireland independently of them.[3] Sometimes these claims are extinguished immediately, sometimes after an interval; but in this country the constitutionality of the former course is doubtful, and the Illinois bill adopts the latter, allowing five years, with an additional term for future interests if noted on the register within the five years.[4] In fixing the period the essential point is that it shall be definite. Statutes of limitation generally provide that when a claimant under age or insane recovers from his disability, when a claimant who is abroad returns, when a claimant unascertained becomes ascertained, or when a future claim falls into possession, a limitation period shall begin again. In order to make titles clear, such re-commencements must be avoided. The constitutionality of barring persons under disability has been doubted, but I think inadvisedly. The Illinois Act does not give them a new period,[5] but allows their guardians, etc., to take proceedings on their behalf. It is also essential to the efficacy of the system that the remedy of claimants should be, not the vacating of the registered title, but the requiring

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[1] Eng. 1875, § 21; Illinois, § 30.

[2] Eng. Act of 1862, § 20; Eng. Act of 1875, § 7, and see § 8; Victoria, § 69; N. Zealand, § 39; Illinois, § 29.

[3] Eng. Declaration of Title Act, 25–6 Vict. c. 67; Ireland, Landed Estates Court, 21–2 Vict. c. 72; especially §§ 51, 53; 28–9 Vict. c. 88, § 5.

[4] Illinois, § 37. [5] Ibid.

a registered confirmation from the registered holder, thus defining the claim, and continuing to the public the benefits of the new system. The constitutional questions are discussed in 6 HARVARD LAW REVIEW, 312, 411, 412; 3 Western L. Jl. 289.

Statutes which allow an immediate or short bar of claims always provide that the title be investigated by public examiners, and that persons in possession be notified, and claimants advertised for and heard;[1] and all claims which are held valid are preserved, and noted on the register.[2] Under a perfect system they would be formally extinguished, and re-created by registered grants from the registered holder of the fee simple. It would be a wise provision that, in cases where the title had not been investigated, assent of the parties in possession, and publication of the fact that the title had been brought under the new system, should bar all adverse claims not asserted within twenty years.

In the British Parliament strong objection has been expressed against allowing a registrar or examiners to adjudicate on questions of title,[3] but a reference is generally allowed to a court.[4]

All the statutes exempt certain claims from extinguishment.[5] These generally include (besides the rights of eminent domain and escheat), minerals, old rents, profits in prender, and easements, unpaid assessments, and the rights of persons in possession at the time when the premises are first brought under the new system. It would be better to allow the holder to resist these claims until brought on the register. Short occupation leases are always preserved, whether created before or after the premises are brought under the system.[6]

Space does not allow of more than an allusion to the question of maps and boundaries. The exact determination of boundaries is not essential, but the statutes generally provide means for determining them if desired. *H. W. B. Mackay.*

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[1] Eng. Act of 1862, §§ 5, 6; 1875, § 6; Declaration of Title Act, § 6; Irish Landed Estates Ct. Act, § 51; Victoria, §§ 22, 23; N. Zealand, § 23; Illinois, § 14.

[2] Eng. Act of 1862, § 20; 1875, § 9; Victoria, § 23; N. Zealand, § 38; Illinois, §§ 14, 17.

[3] Hansard, 1862, clxvii. 245, 250, 253, and many other passages.

[4] Eng. Act of 1862, § 6; 1875, §§ 74-77; Victoria, § 33; N. Zealand, § 31; Illinois, § 81.

[5] Eng. Act of 1862, § 27; 1875, § 18; Victoria, § 74; N. Zealand, §§ 46, 129, 139; Illinois, § 29.

[6] Eng. Act of 1862, § 27; 1875, § 18 (7); Illinois, § 29.